

Timesharing or Real Rights of Periodic Occupation: From Consumption Property to Reality

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Abstract

The issue of timesharing remains the order of the day. Indeed, the increase in tourism and the need to regulate the use and enjoyment of real estate, for short periods in summer areas, accentuated the need to better regulate an economic activity that has proliferated. Thus, in addition to European Union Directives, we see a growing improvement in Portuguese domestic law in order to face the challenges of these new times. In particular with regard to the right of repentance without stating the reason, the prohibition of providing advance payments or other aspects aimed at effective consumer protection.

Keywords: Timesharing, Consumer, Tourist Apartment, Right to Regret, User Rights and Obligations, Rights and Obligations of the Owner of the Tourism Enterprise.

1. General Considerations

I took on the task of studying the timesharing or the right in rem to periodic occupation. If, as we shall seek to demonstrate, this is a right interlinked with the modernity of the rights in rem, we are nevertheless faced with a regime that has undergone a great deal of evolution, driven largely by issues related to the right of consumption. In fact, should we consider the origins and subsequent development in the respective legal regime, we may easily perceive how matters related to consumer law¹ have always been a constant. In effect, the increase in tourism and the need to regulate the use and enjoyment of property for short periods of time, especially for summer holidays in vacation areas, has underpinned the need to regulate in order to protect the individual who contracts the owner of a property intended for holiday-period accommodation. In particular, the individual who opted out of hotel accommodation because of the higher costs² and instead chose to lease an apartment for a short period, commonly for holidays at a seaside resort.

We therefore deal with a contract for the provision of services, the object of which is a property, generally a furnished flat, intended to house one or several individuals for short periods of time over the course of a calendar year. If the flat must be in a reasonable state of repair, with the household appliances and other equipment working, there are naturally a number of aspects that need taking into account in order to protect the person who entered into the contract, the actual consumer, seeking to enjoy a specific period of holidays. In fact, in order to safeguard consumer protection, the European Union approved two directives. The first, Directive 94/47/EC³, approaches the need to avoid misleading or incomplete information in information on the sale of rights to use immovable properties on a timeshare basis. The second, Directive 2008/122/EC⁴, clarifies aspects motivated by targeted reports in order to implement *acquis*⁵ consumer protection and strives to remove loopholes susceptible to aggravating distortions of competition and harming consumers.

¹ On consumer law and special consumer protection, Calvão da Silva, *Responsabilidade Civil do Produtor*, Coimbra, 1990, pp. 61 et seq.

² On the economic and social interests of the right to periodic accommodation, Jorge Wahl Silva, "Tempo Compartido de la Copropiedad a la Multipropiedad?" in *Revista Chilena de Derecho*, Vol 23, no.1, 1996, p. 129

³ Cf. Directive 94/47/EC of the Parliament and of the Council of 26 October 1994 on the protection of purchasers regarding certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.

⁴ Cf. Directive 2008/122/EC of the Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange contracts.

⁵ On this topic, Albrecht Rothacher emphasises the importance of the Commission's Report on the Internal Market and the Accession of New Member States, which highlighted the *acquis* on consumer protection. Cf. "Consumer Protection in Central and Eastern Europe and EU Accession" in *Journal for Labour and Social Affairs in Eastern Europe*, Vol. 2, No. 2, 1999, pp. 187 et seq.

Moreover, safeguarding pre-contractual information and their respective terms, so as to avoid misleading and aggressive commercial practices as well as various other unfair business-to-consumer practices, another Directive came into force in 2005 and specifically aiming to curb unfair commercial practices⁶.

These innovative guidelines, furthermore promoted beyond the scope of these Directives, have already impacted on more recent Portuguese positive law. In particular, there was the 1993 legislation that replaced the previous Decree-Laws⁷. We must underline how the respective preamble stresses measures aimed at protecting the consumer acquirer. In particular, this stipulates the need to provide consumers with timely and detailed information on the right in rem to acquiring a periodic occupation, establishing the seller's obligation to provide a document, complementary to the contract, with precise and exhaustive indications. As well as the right to terminate the acquisition contract or the contract, without suffering any penalty, for a period of 14 days in order to foster purchasing decisions less influenced by aggressive promotion and marketing techniques. In addition, there arose the obligation for the accommodation unit owners to provide guarantees in order to defend the rights of purchasers or promissory purchasers. And, as a corollary to protecting purchaser-consumers, there was an adequate typification of the administrative offences with a due updating of the fines applicable.

Furthermore, as would be expected, the content of the two Directives implied particular modifications to the contents of Decree-Law 275/93. Accordingly, the transposition of the 1994 Directive contained protective virtualities⁸ driving the need to introduce amendments to the regime in effect resulting in the enacting of Decree-Law no. 180/99 of 22 May. However, as the European Commission had already concluded the previous Directive had not been transposed in its entirety⁹, other precepts were also subject to alteration through the provisions of Decree-Law no. 22/2002 of 31 January. However, in keeping with the contents of the 2008 Directive, it later became necessary to approve yet another diploma, Decree-Law no. 37/2011 of 10 March, which sought to improve certain aspects related to consumer protection. In particular, the pre-contractual information of consumers and the deadline for the exercise of the right of withdrawal, without giving a reason or paying the corresponding charges. However, due to the need to more appropriately transpose the 2008 Directive, Decree-Law no. 245/2015 of 20 October introduced the sixth amendment to the contents of Decree-Law no. 275/93, once again with the purpose of implementing and further densifying the very special protection for consumers. This especially targeted the prohibition of soliciting deposits or other considerations in resale contracts prior to concluding the business or before the resale contract has been terminated by any other means.

2. Real Periodic Occupation Rights as a Symptom of Modernity

Taking into account the rapid development of tourism-oriented activities that compete with the hotel business, one can understand the care taken to protect the consumer but equally to grant a right in rem to enjoyment to the detriment of the renting entity and any markedly aggressive approach¹⁰. Accordingly, the intention is not to have a service provision agreement with a hotel unit or even a local accommodation company but rather a subjective right of enjoyment of a real nature. However, should the option for reality contribute to the security of the law, it is important to recall that the choice for any of the pre-existing rights of enjoyment raises several drawbacks. Indeed, as regards the horizontal property regime, any accommodation acquisition, besides representing a very expensive option, would imply charges inherent to the exercise of the property,

⁶ Cf. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market. More broadly, on changes to European Union law with a view to protecting consumer rights, ZabiáVernadaki, "Consumer Protection and the Reform of the European Consumer Acquis" in *International Company and Commercial Law Review*, no. 21, 2010, pp. 316 et seq.

⁷ Cf. Decree-Law no. 355/81 of 31 December, no. 130/89 of 19 April and Decree-Law 275/93 of 5 August.

⁸ On the advantages of the national regime, in comparison with the precepts of the 2004 Directive, Januário da Costa Gomes, "Sobre o Direito de Arrepende do Adquirente de Direito Real de Habitação Periódica (Time-Sharing) e a sua Articulação com Direitos Similares noutros Contratos de Consumo" in *Revista Portuguesa de Direito do Consumo*, no. 3, 1995, p. 71.

⁹ These transposition shortcomings were not only detected in Portuguese law but also emerged in the Dutch, Austrian, French and Spanish legal systems. See Alicia Aparicio and Miguel Gómez Jené, "Hacia una Modificación de la Directiva de Timesharing", in *Revista Española de Derecho Internacional*, Vol 67, 2005, pp. 2 et seq.

¹⁰ On this dilemma and the advantages of real co-ownership, Marina Petrone, *Multiproprietà, Individuazione dell' Oggetto e Schemi Reali Tipici*, Milan, 1985, pp. 3 et seq. José Lobo Moutinho and Luís Bernardes, "Estudo sobre o Direito Real de Habitação Periódica" in *Direito e Justiça*, Vol. 7, 1993, pp. 412 et seq.

Which would be inappropriate for those only intending to enjoy a brief vacation stay, for a limited period of time, in a certain place other than their habitual residence¹¹. In turn, as regards joint ownership, there are aspects of the respective legal regime, for example the scope for requesting the division of the common property, which are inconsistent with the interests in question¹².

For such reason, a new type of right in rem has arisen in various legal systems, designed to grant enjoyment over an accommodation unit situated in a tourist resort or complex. Moreover, this new type of real right was not always recognised, ab initio, by the legislator but, on occasion, through jurisprudence.¹³ Therefore, only in a second moment would the right in rem be recognised as such in ordinary legislation, all the more so because various Civil Law Codes, even those written in the 20th century, did not provide any recognition.

By assuming the need to create a new right in rem, and accordingly safeguarding the structuring principle of typicality¹⁴, the legislator has highlighted, among the advantages of the new regime of fractional ownership by time shares, more appropriate protection than the mere legal protection of the type held by bond holders¹⁵. Therefore, as investing in holiday homes is not within everyone's reach, this right in rem, which is also subject to registration and enforceable *erga omnes*, consolidates the security of individual rights, in particular as regards the usage and management of tourist resorts. Furthermore, with a view to ensuring minimum quality standards for tourism developments, legislation passed in 1993¹⁶ established that only 60% of the accommodation units in any development could be operated on a timeshare basis.

The legislator's adaptability in creating new legal types, whose usefulness and need has been widely recognised given the insufficiencies of other types of real rights, such as condominium or joint ownership structures, in meeting the demands of modern life, especially in the tourism sector, in itself belies the decline¹⁷, the crisis¹⁸ or the underdevelopment of the dogmatics of reality¹⁹. On the contrary, this rather reiterates a modernity and adaptability, as we previously noted, as an identity of the rights in rem as a sub-branch of civil law. Additionally, on another occasion this has justified highlighting the real periodic occupation right as one of the paradigmatic examples of the impressive acceptability of the future denoted by the rights in rem²⁰. Thus, regardless of the enthusiasm the development of this field has attracted, in terms of an optimistic prognosis²¹, we should look to the main features of the respective legal regime.

3. The Specificity of the Object

The right in rem for periodic occupation is only understandable when especially carefully considering the object on which the set of powers to be exercised by the respective holder is focused. This right in rem is not susceptible to covering all tangible objects. Indeed, it only applies to a special category of immovable property. Therefore, more than is required of the condominium right in rem, where the respective rights must apply to a building constituted by independent units, distinct and isolated from each other, with their own exits into a shared part of the building or onto a public highway²², in the periodic occupation right there must be accommodation units integrated into hotel-apartments, tourist villages and tourist apartments²³. Furthermore, in addition to the ownership or condominium rights, the respective holder can only constitute real periodic occupation rights over those housing units²⁴.

¹¹Cf. Henrique de Mesquita, "Uma Nova Figura Real: O Direito de Habitação Periódica" in *Revista de Direito e Economia*, Year 8, no. 1, 1982, p. 43.

¹²Cf. Henrique de Mesquita, "Uma Nova Figura..." in op. cit., p. 46.

¹³ As was the case in the Italian legal system. Cf. NucciaParodi, "Multiproprietà" in *TrattatodeiDirittiReali*, Milan, 2011, pp. 457-8.

¹⁴ About typicality, as a structuring principle of reality, see our *Manual de Direitos Reais*, 2nd ed., Lisbon, 2020, pp. 118 et seq.

¹⁵ Cf. Decree-Law no. 355/81.

¹⁶ Cf. Decree-Law no. 275/93.

¹⁷ Cf. Menezes Cordeiro, *Direitos Reais*, Vol. I, Lisbon, 1979, pp. 50-1.

¹⁸ Cf. Oliveira Ascensão, *A Tipicidade dos Direitos Reais*, Lisbon, 1968, p. 13.

¹⁹ Cf. José Alberto Vieira, *Direitos Reais*, Coimbra, 2008, p. 45.

²⁰ See our *Direitos Reais e Bens Culturais Móveis*, Cascais, 2020, p. 9

²¹ On this topic, Mel Weinberger, "Timesharing for the Next Century" in *Solo and Small Firm Lawyer*, Vol. 16, no. 3, 1999, pp. 38 et seq.

²² Cf. article 1415 CC

²³ Cf. article 1 Decree-Law no. 257/93

²⁴ Cf. article 2 Decree-Law no. 275/93.

The units must be independent, distinct and isolated from each other, with their own exit to a common area or to a public highway. They must also be part of a tourist development in which at least thirty percent of the accommodation units allocated to the tourist development are not operated as periodic occupation rights or tourist accommodation rights. In conformity with the above, when developing tourism integrated in tourist resort structures²⁵, the same building, group of buildings or group of properties, which are subject to a single description in the land register, must be compatible²⁶ with the aforementioned accommodation unit requirements and in receipt of a prior declaration of notification from Turismo de Portugal, I.P. accompanied by a series of descriptive documents detailing the project and the respective owners²⁷. However, whenever Turismo de Portugal, I.P. does not issue an opinion within 30 days of submitting the prior notice, the owner of the units may advance with constituting real periodic occupation rights under the terms and in accordance with the declarations included in the prior notice²⁸.

4. Duration

We must also emphasise the aspects related to the term and period of effective usage and fruition. Thus, the periodic occupation right is generally perpetual but the constitutive deed may establish a duration limit. In this case, as the right is temporary in nature, the period of validity, set by agreement between the parties, must respect a minimum period of one year²⁹, from its establishment or the date of its opening to the public when under construction, instead of the fifteen-year period provided for in previous legislation³⁰, a timeframe duly perceived as excessively long.

In addition to the duration of the usage and benefit, as agreed between the respective parties or under the terms of the aforementioned subsidiary rule, it is important to approach the period of effective usage by the holder of the real periodic occupation right in each calendar year. From *nomen juris*, there hence derives a truly piecemeal right. Logically, the utiliser³¹ cannot use and benefit from the accommodation unit for the whole of the calendar year, but only for a proportion of it. Moreover, the period of effective usage is determined or determinable each year³² but which must retain the same duration³³. In any case, the final period of each year may end in the beginning of the following year and the owner must reserve also an annual period of seven consecutive days, intended for the repair, conservation, cleaning, and other similar purposes, of the tourist resort³⁴.

5. Rights and Obligations of the Utiliser

The utiliser may inhabit the accommodation unit for the contractually designated period established, making use of the respective shared facilities and equipment while also benefiting from the services provided by the property's owner³⁵. However, whenever it is not possible to use the accommodation unit during this set period, whether due to reasons of force majeure or unforeseeable circumstances beyond the utiliser's control, the latter party may demand the usage and benefit of alternative accommodation, of an identical or superior category, in a location close to the property development subject to the contract³⁶.

The utiliser has the right to participate in the general assembly and may deliberate and vote in writing. In particular, this right covers the election of the assembly chair, the statutory auditor and the auditing firm, the approval of the opinion on the management report and accounts detailing the application of the periodical payments, consideration of the management and maintenance program for the following year, proposals for changing periodical payment amounts and the dismissal and replacement of the undertaking's managers³⁷.

²⁵ Cf. article 4(1) Decree-Law no. 257/93.

²⁶ Cf. article 8(2) Decree-Law no. 275/93

²⁷ Cf. article 5 Decree-Law no. 275/93.

²⁸ Cf. article 5 (5) Decree-Law no. 275/93.

²⁹ Cf. article 3 of Decree-Law no. 275/93.

³⁰ Cf. Article 3 of the aforementioned law, as amended by Decree-Law no. 37/2011 of 10 March.

³¹ This is the term chosen by Carvalho Fernandes, as opposed to user, which refers to the holder of the right of use and housing. Cf. *Lições...* op. cit., p. 453.

³² Cf. article 3(2) of Decree-Law no. 275/93.

³³ Cf. article 3(3) of Decree-Law no. 275/93.

³⁴ Cf. article 3(4,5)

³⁵ Cf. article 21(1) (a,b).

³⁶ Cf. article 21(1)(c)

³⁷ Cf. articles 34, 35 and 36.

The utiliser may also encumber or freely transfer this right to a third party, by means of a declaration of the parties registered on the property certificate, with the signatures of the person responsible for the encumbrance or the alienation certified in person³⁸. Therefore, no restriction on transferability or encumbrance, inserted in the constitutive deed, is deemed admissible given the injunctive nature of article 12. On the other hand, the transfer of the periodic occupation right, subject only to a private document, is necessarily registered in the land register. Hence, the plan to establish a right in rem for periodic occupation differs from that of any subsequent transmission or encumbrance³⁹. However, as an act between living persons, this implies a declaration by the parties, entered onto the land certificate, and consequently assigning the utiliser's rights and obligations towards the owner of the undertaking or the transferee of its operation without needing to obtain their agreement in accordance with the provisions of Article 12, paragraphs 1 and 4.

Utilisers can also waive their rights in rem to periodic occupation by means of a statement entered onto the land certificate with the signature certified in person⁴⁰. Such a declaration shall be notified both to the owner of the undertaking and to Turismo de Portugal, IP, and takes effect six months after the notifications referred to therein. In fact, when recalling the content of the community guidelines, this makes sense as the need to remove obstacles to the free transferability and circulation of goods and services has already been signalled. In short, the encumbrance, transfer and waiver of the right of periodic occupation does not imply the consent or authorisation of the owner of the development where the accommodation unit is located.

As regards obligations, the payment of the periodic charge remains the utiliser's main burden⁴¹. Such a provision, a genuine obligation in rem⁴² or encumbrance in rem⁴³, is intended to compensate for the costs of tourist usage and operating services, contributions, taxes and other amounts provided for in the building permit. The owner or manager must also have access for maintenance and cleaning. As well as remunerating the undertaking's management, which cannot however exceed 20% of the total periodic charge⁴⁴. The utiliser must also act appropriately, and is especially forbidden from using the accommodation unit and the areas destined for common usage for purposes other than those for which they are intended as well as from practicing those acts prohibited by the memorandum of association or by the regulations governing the operation of the development⁴⁵.

6. The Rights and Obligations of Owners

As regards the rights of owners, the most important is receipt of the periodic payment made for each utiliser. This may, as is understandable and reasonable, vary according to the time of year to which the right in rem relates⁴⁶. Otherwise, the non-receipt of that benefit leads to the triggering of a regime that protects the interests at stake⁴⁷. Accordingly, up to two months before the beginning of exercising the right, the owner may object to the exercise⁴⁸ by any defaulting utiliser. The owner may also allocate the accommodation unit to tourism exploitation during the period corresponding to that right in which case the instalment due is considered settled⁴⁹. Moreover, unlike the non-payment of the fee payable for alienating the building right, the instalments or indemnities, to which late payment interest is added, this may result in the filing of an enforcement action under the terms and for the purposes of article 46 d) of the Portuguese Code of Civil Procedure⁵⁰.

³⁸ Cf. 12(1).

³⁹ Cf. Judgment of the Supreme Court of 4 March 2004.

⁴⁰ Cf. article 42(1).

⁴¹ This was the opinion of Carvalho Fernandes, *Lições de Direitos Reais*, 6^a ed., Lisbon, 2009, p. 485.

⁴² Cf. Carvalho Fernandes, *Lições...* op. cit., p. 486.

⁴³ Cf. Oliveira Ascensão, *Direito Civil: Reais*, op. cit., p. 520.

⁴⁴ Cf. article 22(4).

⁴⁵ Cf. article 21(2).

⁴⁶ Cf. article 22(3).

⁴⁷ Carvalho Fernandes expresses his agreement with this regime. See *Lessons...* op. cit. On the other hand, Oliveira Ascensão considered this legal regime violently protective of the owner. Cf. *Direito Civil: Reais*, 5^a ed., Coimbra, 1993, p. 520.

⁴⁸ Cf. article 23(3).

⁴⁹ Cf. article 23(4).

⁵⁰ Cf. article 23(2).

In addition, in contrast to the building right, the owner of the development does not enjoy the right of preference in sales or transfers in lieu of payment of the periodic occupation rights⁵¹.

The owner is also not permitted to establish other rights in rem on the accommodation units⁵². From another perspective, regarding the obligations⁵³, among others, we would highlight the following: administration, conservation and cleaning of the accommodation units, their fixtures and fittings and the installations and equipment for common usage; carrying out the indispensable repairs, at a time and under conditions that minimise any sacrificing of the utiliser's usage and enjoyment; payment of the contributions, fees, taxes and annual charges levied on the property; allocating a percentage of no less than 4% of the value of the periodic instalments paid to the constitution of a reserve fund destined exclusively for the execution of repairs and conservation works of the installations and equipment for common use and the respective accommodation units, their fixtures and fittings; to provide a bond for the proper administration and maintenance of the property in favour of the utilisers; to prepare, on an annual basis, the accounts relating to the usage of the periodic charges paid by the rights-holders and expenditure charged to the reserve fund; to prepare a management report and submit both for the consideration of the auditing firm or statutory auditor; to prepare and submit to the general assembly the property administration and maintenance program for the following year.

However, whenever the owner transfers the running of the development and consequently transfers the related powers and duties to the transferee, the owner's responsibility towards the holders of the real periodic occupation rights for the good administration and conservation of the development remains even if at a subsidiary level⁵⁴. In addition, Turismo de Portugal, I.P. and the owners of the periodic occupation rights must be notified of the transfer of management on penalty of the transfer remaining correspondingly ineffective⁵⁵.

7. Assembly of Utilisers

As the periodic occupation housing right is a fractional ownership regime with owner shares, it therefore makes sense that, similar to the horizontal property right or condominium, there is a general assembly. The accommodation unit also bears some similarities to the autonomous unit with a horizontal property right. However, there are important differences. In condominiums or horizontal property structures, all the rights of condominium members exhaust the powers applicable to the building⁵⁶ whereas under the periodic occupation right, only one part is made up of accommodation units. Hence, apart from the utilisers, the building's owner maintains very relevant claims. The owner is understandably responsible for the management and maintenance of the accommodation units, their contents, household appliances and other equipment as well as the facilities and equipment in common use in the building⁵⁷. Accordingly, the utilisers assembly does not hold the power to elect the administrator unlike the condominium assembly. However, the assembly can assess the development's management and maintenance programs under the occupation right in rem for the following year⁵⁸. The assembly may also dismiss the management when the property owner or transferee fails to comply with the obligation of good administration or is negligent in the performance of such obligations. Non-compliance with the obligation to administer includes, for example, the failure to convene a utilisers general assembly; failure to approve the management report for the previous financial year; failure of the owner or transferee to attend the general assembly; failure to establish the reserve fund; and the failure to establish or the expiry of the reserve fund⁵⁹.

Furthermore as regards the general assembly, whether convened by the president or by the entity responsible for managing the development, we would note its set of competences⁶⁰ includes the following: to elect the chair of the assembly; to decide on the management report and accounts relating to the use of the periodic charges;

⁵¹As reminded by Mónica Jardim, while this matter is omitted in the current diploma, Decree-Law no. 130/89 had already regulated on this matter in accordance with the provisions of article 13. Cf. "Direito Real de Habitação Periódica" in *Estudos de Direitos Reais e de Registo Predial*, Coimbra, 2018, p. 176.

⁵² Cf. article 2(1).

⁵³ The owner's obligations are set out in section VI on the administration and maintenance of the development, articles 25 and following.

⁵⁴ Cf. article 25(2).

⁵⁵ Cf. article 25(3).

⁵⁶ Within this scope, see Carvalho Fernandes, *Lições...* op. cit., p. 480.

⁵⁷ Cf. article 25(1).

⁵⁸ Cf. article 34(2)(c)

⁵⁹ Cf. article 36(2).

⁶⁰ Cf. article 34.

To elect the statutory auditor or auditing firm responsible for supervising and approving the respective management report and accounts; to decide on amendments to the periodic charges and fees.

8. Causes for Extinction

As regards the specific causes for extinction of the periodic occupation right in rem, we may refer to the right of termination without stating any reason and the right of withdrawal, also designated as the purchaser's right to repent. Therefore, despite the requirements to provide the buyer, as a consumer, with a special duty of information in order to propitiate a conscious and cautious choice⁶¹, the utiliser may terminate the contract, without giving any reason and entirely free of charge, within fourteen days from the date of conclusion of the contract or from the date when receiving the contract or the termination form⁶². Moreover, when the contract interlinks with a contract of adherence to exchange systems, the withdrawal period is identical in both contracts and counted in the same way⁶³. We would mention that the existence of any credit agreement, entered into with either the seller or a third party will also terminate without any payment of compensation or charges in the event of the termination referred to above⁶⁴. This is also the case, in an equivalent way, in promissory contracts alienating a real periodic occupation right⁶⁵.

Upon contract termination, the vendor must refund all sums received up to the date of termination to the purchaser and with all ancillary contracts also deemed automatically terminated without payment of any charge or indemnity. Accordingly, any contract for the regular usage of goods or a contract for the purchase of a long-term holiday product, with such services provided by a professional or a third party on the basis of an agreement between the latter and the professional, are classed as ancillary contracts⁶⁶.

The purchaser or promissory purchaser may not waive the right to cancel without stating a reason and any agreement that excludes or in any way limits this right is null and void⁶⁷. Accordingly, the utiliser holds a true potestative right of an extinctive nature, the uniqueness of which lies in its particular positioning in the respective contract. In effect, as the utiliser is understood as a consumer requiring protection⁶⁸, this explains the function of this right of utiliser retraction or repentance⁶⁹. Nevertheless, as Januário Gomes argues, the right of withdrawal is not exclusive to Consumer Law nor does it represent something typical of the consumer status⁷⁰. In any case, given the aggressiveness of tourism promotion from a business perspective aimed at the consumer-user, the reinforcement of resolution guarantees in European Union member states is understandable⁷¹. However, alongside the resolution, naturally more favourable to the utiliser, it is important to highlight the renunciation of the real periodic occupation right. Therefore, the holder of the periodic occupation right can waive this by means of a declaration entered in the land certificate with the signature certified in person⁷².

With regard to the other causes for extinction, as Rui Pinto Duarte points out, while the law does not mention the possible total loss of the building hosting the respective development, it makes sense to analogously apply the rules regarding usufruct⁷³. Moreover, unlike that right and other minor beneficiary rights, the combination of the periodic occupation right and the property in the same person does not extinguish the minor right. It subsists and may even coexist with the property given that, as article 35 stipulates, the development owner may be the holder of real periodic occupation rights, participating in the assembly in accordance with the rights held.

9. Legal Nature

⁶¹ Mónica Jardim's expression that deserves our agreement. Cf. "Direito Real de Habitação..." op cit., p. 181.

⁶² Cf. article 16(1).

⁶³ Cf. article 16(3).

⁶⁴ Cf. Article 16(6).

⁶⁵ Cf. article 19(1).

⁶⁶ Cf. article 16(9).

⁶⁷ Cf. article 20(1).

⁶⁸ Cf. Ramon Mullerat, "Time Sharing in Europe: Present and Future" in *International Company and Commercial Law Review*, no. 13, 2002, pp. 50 et seq. ZabiáVernadaki, "Consumer..." in op. cit., pp. 316 et seq.

⁶⁹ Cf. José Lobo Moutinho and Luís Bernardes, "Estudo..." in op. cit., pp. 326 et seq.

⁷⁰ Cf. Januário Costa Gomes, "Sobre o Direito de Arrependimento..." in op. cit., p 80.

⁷¹ Cf. Mario Trimarchi, "La Multiproprietà" in *Il Diritto dell' Unione Europea*, coord. by Antonio Tizzano, Vol. I, Turin, 2000, pp. 251-2.

⁷² Cf. article 42(1).

⁷³ Cf. Rui Pinto Duarte, *Curso...* op. cit., p. 232.

The right to periodic occupation includes multiple approaches in particular according to the perspectives of Consumer Law⁷⁴, Contract Law⁷⁵, Comparative Law⁷⁶ as well as Private International Law⁷⁷.

However, regardless of these important approaches that help confirm the growing interdisciplinarity of very relevant aspects of legal dogmatics, this does not represent an insurmountable obstacle to assessing the autonomy of the respective legal regime and carefully reflecting on the respective legal nature.

In fact, in this respect, we should not experience any conditioning by the legislative qualification, thus, as a right in rem for periodic occupation. As generally accepted, this typicity attributes a monopoly for the creation of rights in rem to the legislator but not a monopoly over the qualification of those rights. Therefore, when approaching the usage and fruition of a housing unit and the consequent legal exploitation of a tangible immovable property, we unavoidably have to recognise that we are not facing a capricious or anodyne *nomen juris*. Instead, we are faced with a right in rem which, as this constitutes a right of use and enjoyment, amounts to a right of enjoyment.

This must therefore also prefigure a typical enjoyment right in rem. Hence, this should not require its extent to take on the same duration as any other type included in any pre-existing catalogue. Accordingly, although there are similarities with the right to housing⁷⁸, the condominium right⁷⁹ or the building right, defending the respective autonomy, vis-à-vis the other rights in rem⁸⁰ seems an almost consensual position. In fact, from a systematic perspective, it makes sense to begin the respective study after tackling building rights and condominium rights, bearing in mind the similarities that exist. Indeed, in the case of the building right, there is also a right to use and enjoy an existing building. In turn, in the case of horizontal properties or condominiums, there must be a building over which rights of use and enjoyment may apply and as well as an organisation with the core feature of an assembly with decision-making powers. Although periodic occupation is not translatable into any of these rights, but rather unavoidably justifies and imposes them, it retains autonomy ahead of all the other minor beneficiary rights in rem.

10. Conclusions

In summary, increasing levels of tourism and the corresponding need to regulate the usage and fruition of real estate through activities distinctly different from the hotel sector, provided the basis for the appearance of the right in rem to periodic occupation. From the outset, the aim of this right was to protect consumer rights; in particular, to avoid misleading and incomplete information and to consolidate the consumer protection acquis. In addition, and at a later stage, the right extended to terminating contracts without any unfavourable consequences and obligations over deposits on behalf of owners of accommodation units.

Furthermore, the right of periodic occupation confirms the modernity and openness to the future of rights in rem as a sub-branch of civil law. This emphasises the special nature of the object, the rights and obligations of both parties, the owner and the utiliser, as well as the existence of a general assembly, with relevant powers particularly regarding the dismissal of the administration. In turn, as regards the causes of termination, the utiliser's right to terminate the contract without giving any reason especially stands out. This comes in addition to the unavoidable identity and autonomy of the periodic occupation right as a true and authentic right of enjoyment.

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⁷⁴ Cf. Ramon Mullerat, “Time-Sharing...in op. cit., pp. 50 et seq.

⁷⁵ Cf. Mercedes Sabido Rodríguez, *Régimen Jurídico de los Contratos Turísticos Internacionales: La Protección del Turista-Consumidor*, Madrid, 2020, pp. 15 et seq.

⁷⁶ Cf. Ana Padesca, *Multipropiedad, Time-Sharing y Habitación Periódica en la Unión Europea, Suiza, Turquía, Estados Unidos de América y Argentina*, Cáceres, 2000, pp. 23 et seq. Curtis Berger, “Timesharing in the United States” in *The American Journal of Comparative Law*, no. 38, 1990, pp. 131 et seq.

⁷⁷ Cf. Erik Jayme, “Time-Sharing-Verträge im Internationalen Privat- und Verfahrensrecht” in *IPRax*, no. 4, 1995, pp. 234 et seq.

⁷⁸ Cf. Santos Justo, *Direitos Reais...op. cit.*, p. 435.

⁷⁹ Cf. Carvalho Fernandes, *Lições...op. cit.*, p. 451.

⁸⁰ Cf. Oliveira Ascensão, *Direito Civil: Reais...op. cit.*, p. 514; Menezes Leitão, *Direitos Reais...op. cit.*, p. 409, José Alberto Vieira, *Direitos...op. cit.*, p. 864; Marina Petrone, *Multipropriedade...op. cit.*, pp. 80 et seq.

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